

AMENDED IN SENATE AUGUST 11, 1997

AMENDED IN SENATE JULY 21, 1997

AMENDED IN SENATE JULY 14, 1997

AMENDED IN SENATE JUNE 16, 1997

AMENDED IN ASSEMBLY MAY 20, 1997

AMENDED IN ASSEMBLY APRIL 28, 1997

AMENDED IN ASSEMBLY APRIL 14, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1043

**Introduced by Committee on Revenue and Taxation
(Assembly Members Caldera (Chair), Alquist, Aroner,
Knox, Machado, and Papan)**

February 27, 1997

An act to amend Sections 6830 and 8102 of, and to add Sections 6830.5 ~~and 7284.6~~, 7284.6, *and* 7284.7 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1043, as amended, Committee on Revenue and Taxation. Taxation.

(1) The Sales and Use Tax Law authorizes the State Board of Equalization to contract with persons outside of California for the identification of persons or businesses who may owe taxes or other amounts or to contract for debt collection

services with persons outside of California. Existing law allows the board to add the cost of these services to the amount to be identified or collected from the taxpayer.

This bill would instead require the board to contract with persons outside of California for those services and would require the cost of those services to be added to the amount to be identified or collected, as specified.

This bill would also authorize the board to enter into agreements with one or more private persons, companies, associations, or corporations for the purpose of collecting taxes, interest, additions to tax, or penalties within the state, and would require the cost of the collection service to be added to the amount to be collected from the taxpayer, as specified.

(2) The Sales and Use Tax Law provides, subject to certain exceptions, that it is unlawful for the State Board of Equalization, or certain persons having an administrative duty under that law or access to information with respect to sales or transactions and use taxes collected by that board, to make known or allow the disclosure or examination of certain information or documents.

This bill would, as provided, make it unlawful for any local jurisdiction imposing a utility tax, or certain persons with duties on behalf of that jurisdiction ~~or who obtain~~ access to information with respect to that tax, to ~~make known or allow the disclosure or~~ *disclose or allow the* examination of certain *tax-related* information or documents. This bill would specify that a violation of these provisions is a misdemeanor. By creating a new crime, this bill would establish a state-mandated local program. ~~This bill would also provide that this information shall be exempt from disclosure under the California Public Records Act and that any disclosure of that information shall result in a conclusive presumption, as provided, for purposes of specified provisions of that act.~~

~~(3) The Motor Vehicle Fuel License Tax Law imposes a tax for the privilege of distributing motor vehicle fuel or for the privilege of storing motor vehicle fuel for sale or use in the propulsion of a motor vehicle on a highway, as specified. That law provides that certain persons who have paid a tax shall be reimbursed and repaid the amount of the tax under certain~~



~~circumstances and requires that a claim for refund be supported by the original invoice showing the purchase.~~

~~This bill would instead require that a claim for refund be presented in a form prescribed by the Controller, and that upon the request of the Controller, the claimant support the claim with the original invoice showing the purchase.~~

~~(4) This bill would, in the event that SB 48 is chaptered, becomes operative, and adds a specified section to the Government Code, provide that the provisions of this bill shall not be construed to prohibit the release of information pursuant to certain provisions of that section.~~

~~(5)~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 6830 of the Revenue and
2 Taxation Code is amended to read:
3 6830. (a) For the purpose of identifying persons or
4 businesses who may owe taxes or other amounts, or for the
5 purpose of collecting taxes, interest, additions to tax, and
6 penalties, the board may enter into agreement with one
7 or more private persons, companies, associations, or
8 corporations providing these services outside this state
9 with respect to the identification of persons or businesses
10 who may owe taxes or other amounts, or the collection of
11 taxes, interest, additions to tax, and penalties. The
12 agreement shall provide, as determined by the board
13 with concurrence by the Department of Finance, the rate
14 of payment and the manner in which compensation for
15 services shall be paid. The compensation shall be added
16 to the amount required to be identified or collected by
17 the collection agency or provider of these services from

1 the tax debtor. The board shall provide the necessary
2 information for the contractor to fulfill its obligation
3 under that agreement.

4 (b) As determined by the board, with concurrence by
5 the Department of Finance, the contractor may, as part
6 of the collection process, refer the tax debt for litigation
7 by its legal representatives in the name of the board.

8 (c) Amounts collected pursuant to subdivision (a)
9 shall be transmitted to the Treasurer and deposited in the
10 State Treasury. Of the amounts deposited in the State
11 Treasury, an amount equal to the costs incurred by the
12 board in administering the program authorized by this
13 section shall be available to the board, upon appropriation
14 by the Legislature.

15 (d) In accordance with Section 13292 of the
16 Government Code, an annual report of the out-of-state
17 collection activity is required.

18 SEC. 2. Section 6830.5 is added to the Revenue and
19 Taxation Code, to read:

20 6830.5. (a) For the purpose of collecting taxes,
21 interest, additions to tax, or penalties, the board may
22 enter into agreements with one or more private persons,
23 companies, associations, or corporations providing these
24 services within this state. The agreement shall provide, as
25 determined by the board with concurrence by the
26 Department of Finance, the rate of payment and the
27 manner in which compensation for services shall be paid.
28 The compensation shall be added to the amount required
29 to be collected by the collection agency from the tax
30 debtor. The board shall provide the necessary
31 information for the contractor to fulfill its obligation
32 under the agreement.

33 (b) Amounts collected pursuant to subdivision (a)
34 shall be transmitted to the Treasurer and deposited in the
35 State Treasury. Of the amounts deposited in the State
36 Treasury, an amount equal to the costs incurred by the
37 board in administering the program authorized by
38 subdivision (a) shall be available to the board, upon
39 appropriation by the Legislature.

(c) In accordance with Section 13292 of the Government Code, an annual report of the in-state collection activity is required.

~~SEC. 3. Section 7284.6 is added to the Revenue and Taxation Code, to read:~~

~~7284.6. (a) It is unlawful for any local jurisdiction imposing a utility user tax, any person having an administrative duty for a local jurisdiction imposing a utility user tax, or any employee or agent of a local jurisdiction acting in an official capacity who obtains access to information contained in, or derived from, utility user tax records of a local jurisdiction, to do any of the following:~~

~~(1) Make known, in any manner whatever, either of the following:~~

~~(A) The business affairs, operations, or any other information pertaining to a utility or other company required to report to the local jurisdiction or to pay a utility user tax.~~

~~(B) The amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return.~~

~~(2) Permit any return or copy thereof, or any records containing any abstract or particulars thereof, to be seen or examined by any person who is not an employee or agent of the local jurisdiction imposing the tax, or not an employee of the utility or other company required to report to the local jurisdiction or to pay a utility user tax.~~

~~(b) For purposes of this section:~~

~~(1) "Local jurisdiction" means any city, county, city and county, including any chartered city or city and county, district, or public or municipal corporation.~~

~~(2) "District" means any agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions within limited boundaries.~~

~~(c) Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both, in the discretion of the court.~~

~~(d) This section shall not be construed to prohibit the divulging of information to the State Board of Equalization for the purposes of its administration of the Energy Resources Surcharge Law (Part 19 (commencing with Section 40001) of Division 2 of the Revenue and Taxation Code).~~

~~(e) Any information subject to subdivision (a) shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code), and any disclosure of that information shall be conclusively presumed to result in unfair competitive disadvantage to the person supplying the information within the meaning of subdivision (i) of Section 6254 of the Government Code.~~

~~SEC. 4. Section 8102 of the Revenue and Taxation Code is amended to read:~~

~~8102. The claimant of a refund shall present to the Controller a claim for refund in a form prescribed by the Controller. Upon the request of the Controller, the claimant shall support the claim with the original invoice showing the purchase. The claim shall state the total amount of the fuel purchased by the claimant and the manner and the equipment in which the claimant has used the fuel. The claim shall not be under oath but shall contain, or be accompanied by, a written declaration that it is made under the penalties of perjury.~~

~~SEC. 5. In the event that Senate Bill 448 is chaptered and becomes operative, and adds Section 6254.16 to the Government Code, no provision of this act shall be construed to prohibit the disclosure of any information that is permitted or required to be disclosed pursuant to subdivision (a), (b), (c), (d), or (e) of Section 6254.16 of the Government Code, as added by Senate Bill 448.~~

~~SEC. 6.—~~

~~SEC. 3. Section 7284.6 is added to the Revenue and Taxation Code, to read:~~

~~7284.6. (a) It is unlawful for any local jurisdiction, including any employee, officer, authorized agent, or contractor of the local jurisdiction, to permit any utility~~

1 user's tax return or copy thereof, or any records of any
2 payment of utility user's tax, to be seen or examined by,
3 or disclosed to, any person who is not one of the following:

4 (1) An employee, officer, authorized agent, or
5 contractor of the local jurisdiction with administrative or
6 compliance responsibilities relating to the utility user's
7 tax ordinance.

8 (2) An employee of the utility or other company that
9 is required to report or pay a utility user's tax to the local
10 jurisdiction, and that furnished the records or
11 information.

12 (b) Notwithstanding subdivision (a), this section does
13 not prohibit a local jurisdiction from doing any of the
14 following:

15 (1) Disclosing to a taxpayer information derived from
16 the records of a utility or other utility service provider, if
17 the information is used to calculate the utility user's tax
18 of that taxpayer; or, disclosing that information in a tax
19 collection action, provided that that information is
20 subject to a protective order issued by a court.

21 (2) Disclosing to a tax officer of the state or federal
22 government, pursuant to a written reciprocal agreement,
23 information derived from the records of a utility or other
24 utility service provider, if the information is used to
25 calculate the local utility user's tax.

26 (3) Disclosing the gross utility user's tax revenues
27 collected from the customers of a utility that is owned or
28 operated by the local jurisdiction that imposes the utility
29 user's tax.

30 (c) For purposes of this section:

31 (1) "Local jurisdiction" means any city, county, city
32 and county, including any chartered city or city and
33 county, district, or public or municipal corporation.

34 (2) "District" means any agency of the state, formed
35 pursuant to general law or a special act, for the local
36 performance of governmental or proprietary functions
37 within limited boundaries.

38 (d) Any violation of this section is a misdemeanor and
39 is punishable by a fine not exceeding one thousand dollars

1 (\$1,000), by imprisonment in a county jail not exceeding
2 one year, or by both, in the discretion of the court.

3 (e) This section shall not be construed to prohibit the
4 divulging of information to the State Board of
5 Equalization for the purposes of its administration of the
6 Energy Resources Surcharge Law (Part 19 (commencing
7 with Section 40001) of Division 2 of the Revenue and
8 Taxation Code).

9 (f) Any information subject to subdivision (a) shall be
10 exempt from disclosure under the California Public
11 Records Act (Chapter 3.5 (commencing with Section
12 6250) of Division 7 of the Government Code), except that
13 nothing in this section shall be construed to prohibit the
14 disclosure of records pursuant to Section 6254.16 of the
15 Government Code.

16 SEC. 4. Section 7284.7 is added to the Revenue and
17 Taxation Code, to read:

18 7284.7. (a) It is unlawful for any employee, officer,
19 authorized agent or contractor of a local jurisdiction
20 levying a utility user's tax, that obtains access to
21 information contained in utility user tax records of a local
22 jurisdiction, to disclose any information obtained from
23 the records of a utility or other company required to
24 report or pay a utility user's tax to the local jurisdiction as
25 a result of an audit, or any other information obtained in
26 the course of an on-site audit, to any person who is not an
27 employee, officer, authorized agent, or contractor of the
28 local jurisdiction with administrative or compliance
29 responsibilities relating to the utility user's tax ordinance.

30 (b) Any violation of this section is a misdemeanor and
31 is punishable by a fine not exceeding one thousand dollars
32 (\$1,000), by imprisonment in a county jail not exceeding
33 one year, or by both, in the discretion of the court.

34 (c) This section shall not be construed to prohibit the
35 divulging of information to the State Board of
36 Equalization for the purposes of its administration of the
37 Energy Resources Surcharge Law (Part 19 (commencing
38 with Section 40001) of Division 2 of the Revenue and
39 Taxation Code).

(d) Notwithstanding subdivisions (a) and (b), this section shall not be construed to prohibit an employee, officer, authorized agent, or contractor of a local jurisdiction levying a utility user's tax from doing any of the following:

(1) Disclosing to a taxpayer information derived from the records of a utility or other utility service provider, if the information is used to calculate the utility user's tax of that taxpayer; or, disclosing that information in a tax collection action, provided that the information is subject to a protective order issued by a court.

(2) Disclosing to a tax officer of the state or federal government, pursuant to a written reciprocal agreement, information obtained from the records of a utility or other utility service provider, if the information is used to calculate the local utility user's tax.

(3) Disclosing the gross utility user's tax revenues collected from the customers of a utility that is owned or operated by the local jurisdiction that imposes the utility user's tax.

(e) For purposes of this section:

(1) "Local jurisdiction" means any city, county, city and county, including any chartered city or city and county, district, or public or municipal corporation.

(2) "District" means any agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions within limited boundaries.

(f) Nothing in this section shall be construed to create an exemption from disclosure under subdivision (k) of Section 6254 of the Government Code, or to prohibit the disclosure of records pursuant to Section 6254.16 of the Government Code or subdivision (i) of Section 6254 of the Government Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition
3 of a crime within the meaning of Section 6 of Article
4 XIII B of the California Constitution.

5 Notwithstanding Section 17580 of the Government
6 Code, unless otherwise specified, the provisions of this act
7 shall become operative on the same date that the act
8 takes effect pursuant to the California Constitution.

